DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Aliens—Right of Employment. Truax vs. Raich. (United States, November 1, 1915. 239 U.S. 33.) A statute of Arizona which requires that employers employ only a specified percentage of alien employees is unconstitutional as denying to alien inhabitants the equal protection of the law. An alien admitted to the United States under the federal law, with which law no State has any concern, has not only the privilege of entering and abiding in the United States, but also of entering and abiding in any State, and being an inhabitant of any State entitles him, under the fourteenth amendment, to the equal protection of its laws.

Aliens—Right of Employment on Municipal Work. Heim vs. McCall. (United States, November 29, 1915. 239 U.S. 175, affirming 214 N. Y. 629. See also Crane vs. New York, 239 U.S. 195, affirming 215 N. Y. 154, 108 N.E. 427.) The provision of the labor law of the State of New York that only citizens of the United States shall be employed on public works and that preference shall be given to citizens of that State, is not unconstitutional under the privilege and immunities clause of the federal constitution or under the equal protection or due process clause of the fourteenth amendment thereto, nor is violative of the treaty of 1871 with Italy. It belongs to the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit work to be done on its behalf, or on behalf of its municipalities.

Candidates for Office—Promise to Accept Salary in Lieu of Fees. Galpin vs. City of Chicago. (Illinois, June 24, 1915. 109 N.E. 713.) The promise of a candidate for office to accept an annual salary and to pay into the county treasury all fees, where the law provides that the officer holding the position for which he is a candidate shall receive fees, is illegal and unenforceable. The fees or salary of an officer, when fixed by law, become an incident to the office and it is contrary to public policy for candidates to attempt to attain such office by promises made to the electors to perform the duties of the office for any other or different compensation than that fixed by law.

Citizenship—Married Women. MacKenzie vs. Hare. (United States, December 6, 1915. 239 U.S. 299.) Although under the constitution of the United States every person born in the United States is a citizen thereof, the marriage of an American woman with a foreigner is tantamount to voluntary expatriation; and the court may without exceeding its powers make it so, since such a marriage may involve international complications. Identity of husband and wife is an ancient principle of our jurisdiction, and is still retained notwithstanding much relaxation thereof; and while it has purpose, if not necessity, in domestic policy, it has greater purpose, and greater necessity in international policy.

Commission Form of Government. State vs. Thompson. (Alabama, June 30, 1915. 69 S. 461). The title of an act which purports to provide for a commission form of municipal government for certain cities contemplates the inclusion of a provision for a board of public safety, consisting of three members elective by the senate, to exercise complete and exclusive authority over the police and fire departments, to fix salaries in, and to provide for the maintenance and expenses of such departments. There is no such well defined definition of the idea and scope of a commission form of government as would exclude the addition of such a board.

Cruel and Unusual Punishments. Fry vs. Commonwealth. (Kentucky, November 11, 1915. 179 S.W. 604). The prescribing for the theft of poultry of the value of $2.00 or more of imprisonment for not less than one or more than five years is not in violation of the constitutional provision prohibiting the infliction of cruel and unusual punishment. Penal statutes are enacted in an effort to discourage the perpetration of the offenses denounced therein. The punishment that will tend to deter, in respect of one crime, must necessarily differ from that which will deter in respect of another. The legislature is the judge of the adequacy of the penalities necessary to prevent crime.

Delinquent Children—Juvenile Court Proceedings. Childress vs. State. (Tennessee, November 6, 1915. 179 S.W. 643.) Under an act providing for the disposition, care, protection, etc., of delinquent children, a child may be committed to the State reformatory notwithstanding the fact that such child has not been held to answer any charge by presentment or indictment. The provisions of the state constitution

requiring that no person shall be put to answer any criminal charge but by presentment, indictment or impeachment, do not apply. Such proceedings before a juvenile court do not amount to a trial of the child for any criminal offense and the proceedings are entirely distinct from proceedings in courts ordained to try persons for crime. The juvenile court merely undertakes to remove the delinquent child from bad influences and to make such disposition of the child as to eradicate evil propensities by education, wholesome training, and moral instruction.

Employment Agencies—Workmen. Huntworth vs. Tanner. (Washington, November 6, 1915. 152 P. 523.) The purpose of an act which makes it unlawful for any employment agent or agency to receive from any person seeking employment any remuneration or fee, is to protect the ignorant class of manual laborers, composed largely of foreigners unfamiliar with language or conditions; and it will not be held to apply to persons seeking employment in the professions; and hence will not apply to a teachers' agency.

Employment Contract—Labor Unions. Bemis vs. State. (Oklahoma, October 9, 1915. 152 P. 456.) An act which provides a criminal penalty for an employer who prescribes as a condition upon which one may secure employment under, or remain in the service of such employer (the employment being terminable at the will of either party), that the employee shall enter into an agreement not to become or remain a member of any labor organization while so employed, infringes the right of personal liberty and property.

Game, Property in. Graves vs. Dunlap. (Washington, November 5, 1915. 152 P. 532.) The title to game, while animals ferae naturae, belongs to the State. But when animals ferae naturae are reclaimed by the art and power of man, they are the subject of a qualified right of property, defeasible if they return to their wild state. If reclaimed and kept in inclosed grounds, they are property, and as such will pass to executors and administrators and are the subject of larceny.

Hours of Labor—Constitutionality of Act. Saville vs. Corless. (Utah, July 20, 1915. 151 P. 51.) The title of an act purporting to regulate the hours of employees of mercantile establishments is not indicative of the subject matter of the act which in fact provides for the closing

at six p.m. of all mercantile and commercial houses in cities of over 10,000 population. The act is not a valid exercise of the police power since it affects establishments conducted without employees and in such cases merely fixes a closing hour and is not directed to enterprises affecting the health, morals, safety or general welfare. The act also violates the constitutional right to enjoy, acquire and possess property, the most valuable of which is that of the right to sell.

Hours of Labor—Railroad Employees. Commonwealth vs. Boston and M. R. R. (Massachusetts, November 23, 1915. 110 N.E. 264.) An act which limits the hours of labor of employees in and about steam railroad stations such as baggage men, laborers, and crossing-tenders, infringes the guaranty of the federal constitution of freedom of contract, since it affects employees in railroad stations whose work does not concern the safety of the traveling public, the regulation of whose hours of labor is not legitimately within the police power. Nor can such an act be upheld as an amendment to the charter of the railroad corporation, the act being manifestly not intended as a charter amendment, but as a police regulation amending the labor laws.

Indian Treaties—Abrogation. Loman vs. Paullin. (Oklahoma, September 21, 1915. 152 P. 73.) It is within the power of Congress to abrogate treaties entered into between the United States and a tribe of Indians, though presumably such power will be exercised only where circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should be so. In a contingency, such power may be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians.

Indictment—Necessity. Commonwealth vs. Francies. (Pennsylvania, July 3, 1915. 95 A. 527.) Indictment by a grand jury is not essential in a criminal case to due process, within the meaning of the provision of the federal constitution; hence a provision of a statute permitting a person accused of crime to enter a plea of guilty upon the indictment prior to the submission of the indictment to the grand jury, and authorizing the court to accept the plea and impose sentence, is not unconstitutional.

Intoxicating Liquors—Anti-advertising Liquor Law. Advertiser Co. vs. State. (Alabama, June 10, 1915. 69 S. 501.) As the State has authority under its police power to regulate the sale of intoxicants, and as contracts relating to such sales are subject to such power, an act prohibiting newspapers and magazines in the State from advertising for the sale of intoxicants does not work an impairment of contracts, though the publishers already had contracts for the publication of liquor advertisements.

Legislative Committee, Life of. Fergus vs. Russel. (Illinois, November 6, 1915. 110 N.E. 130). As the functions of a legislature cease upon its adjournment sine die, all the powers which have been delegated by it, or either house thereof, to a committee, by mere resolution, also cease, as the only powers which can be conferred upon such committees are such powers as are possessed by the house or houses making the appointment. The long indulgence of a legislature and each house thereof in the custom of appointing, by joint or separate resolutions, committees to act after final adjournment, can create no right in the legislature or either house to do so. However, the legislature may, by an act regularly passed, create a commission for any proper purpose and vest it with power to perform its duties after the legislature has finally adjourned.

Monopolies—Constitutionality of Act Legalizing Farm Products Pools. Gay vs. Brent. (Kentucky, November 23, 1915. 179 S.W. 1051.) A statute declaring that it shall be lawful for any number of persons to combine or pool crops of wheat, tobacco, and other farm products raised by them for the purpose of classifying, holding, and disposing of the same, in order to obtain a higher price than they can by selling separately, is in conflict with the fourteenth amendment of the federal constitution; it not being possible when such provision is construed in connection with a provision of the State constitution forbidding combinations to enhance or depreciate values of merchandise and other statutory provisions forbidding combinations in regulation of trade, to determine with reasonable certainty when the price of an article has been enhanced above or depreciated below its real value.

Motor Vehicles—Imputed Negligence. Birmingham-Tuscaloosa Ry. and Utilities Co. vs. Carpenter. (Alabama, June 30, 1915. 69 S. 626.) A provision that the contributory negligence of a person operating a

motor vehicle shall be imputed to every occupant thereof, but not to the passengers paying fare and riding in motor vehicles regularly used for hire, is unconstitutional as discriminating agaist persons riding in motor vehicles, and denying equal protection of the law to persons similarly situated.

Moving Pictures—Censorship. Buffalo Branch, Mutual Film Corporation vs. Breitinger. (Pennsylvania, July 3, 1915. 95 A. 433.) An act which provides for the appointment of a State board of censors with powers to regulate the operation and exhibition of moving picture films is neither violative of the bill of rights of the State constitution nor of the due process of law provision of the federal constitution.

Naturalization—White Persons. Dow vs. United States. (United States, September 14, 1915. 226 Fed. 145.) Notwithstanding the fact that in 1790, when the first naturalization law was passed authorizing the naturalization of "free white persons," the common understanding was that only people of European nativity or descent were white, and that all others were colored, and that legislators had not in definite view any persons as white except those of European nativity or descent, in view of the development of the conception of race division and in view of the legislative discussion upon and the reconsideration and reenactment of the naturalization law, the present statute must be considered to include as white persons all persons of the white or Caucasian race; hence the statute must be construed to include Syrians.

Race Discrimination—Separation of White and Negro Passengers. O'Leary v. Illinois Cent. Ry. Co. (Mississippi, October 25, 1915. 69 S. 713.) A state statute requiring separate accommodations for white and negro passengers on railroad trains applies to intrastate passengers only and has no application to a passenger riding on an interstate train.

Religious Societies—Schisms—Diversion of Church Property. Lindstrom vs. Tell. (Minnesota, November 26, 1915. 154 N.W. 969.) Where a church corporation is formed for the purpose of promoting certain defined doctrines of religious faith which are set forth in its corporate articles, the church property which it acquires is impressed with the trust to carry out that purpose, and a majority of the congregation cannot divert the church property to uses inconsistent with the

religious tenets of the church society against the protest of a minority, however small. In the event of a schism in a church, any church property devoted to the propagation of particular doctrines remains with the organization that remains loyal to those doctrines.

Revenue Bills—House of Origin. Hubbard vs. Lowe. (United States, October 15, 1915. 226 Fed. 135.) A bill, originally passed by the United States senate, which was afterwards amended by the house of representatives by striking out everything after the enacting clause and by substituting a different act, and which was subsequently repassed by the senate, is a bill originating in the senate. Where an act as it lies engrossed in the office of the secretary of state bears a senate bill number and contains a certificate of the secretary of the senate that it originated in the senate, the courts must accept the statement of the records that the act originated in the senate, and the journal of congress cannot be resorted to. *Held,* that the Cotton Futures Act, prohibiting contracts for cotton futures, having originated in the Senate contrary to the constitutional requirement that bills for raising revenue shall originate in the house of representatives, is not a law.

Signs—Regulation by Municipal Corporation. Haskell vs. Howard. (Illinois, October 27, 1915. 109 N.E. 992.) Municipalities have power to regulate the construction and use of signs within the corporate limits. Such regulation being the exercise of the police power must be reasonable, and must not invade the personal rights or liberties of citizens. A city in anti-saloon territory has no authority to adopt an ordinance prohibiting the display of any sign or advertisement of any wholesale or retail liquor dealer upon any vehicle or building, where the ordinance is not limited to advertisements for the sale of liquor within the municipality, nor for orders for the sale and delivery of liquors in such city, and has no reasonable connection with the power to prohibit the sale of liquor.

States—Liability to Be Sued. State vs. Superior Court. (Washington, August 16, 1915. 151 P. 108.) It is well settled that an action cannot be maintained against a state without its consent, and that the state when it does so consent, can fix the place in which it may be sued, limit the causes for which the suit may be brought, and define the class of persons by whom it can be maintained. The state being sovereign, its power to control and regulate the right of suit against

it is plenary; it may grant the right or refuse it as it chooses, and when it grants it, it may enact such condition thereto as it deems wise.

Statutes—General and Special Laws. State vs. Atchison, T. & S. F. Ry. Co. (New Mexico, July 27, 1915. 151 P. 305.) A general law is one that relates to a subject of a general nature or that affects all the people of the state, or all of a particular class. A special law is one made for individual cases, or for less than a class of persons, or subjects, requiring laws appropriate to peculiar conditions or circumstances. Statutory or constitutional provisions against special legislation do not prevent the legislature from dividing legislation into classes and applying different rules to each. The classification, however, must be based upon substantial distinctions, and not be arbitrary in its nature, and must apply to every member of the class or every subject under similar conditions, embracing all and excluding none whose conditions and circumstances render legislation necessary or appropriate to them as a class. A statute classifying counties numerically, without giving a basis for such classification or making provision for the future admission or exclusion of other counties, is special legislation.

Theatre Licenses—Revocation. Bainbridge vs. City of Minneapolis (Minnesota, November 19, 1915. 154 N.W. 964.) Where the charter of a city gives to the mayor the power to revoke theatre licenses, the power conferred is not an absolute one. It cannot be used capriciously, arbitrarily or oppressively, but only in the exercise of an honest and reasonable discretion. The exercise of the discretion of the mayor, however, cannot be subject to judicial control; the court will merely inquire whether a fair legal discretion was exercised.

Weights and Measures—Act Requiring Sale by Weight or Numerical Count. Ex parte Steube. (Ohio, December 1, 1914. 110 N.E. 250.) An act which requires certain articles therein enumerated to be sold by avoirdupois weight or numerical count, unless under agreement in writing of all contracting parties, is unconstitutional. The act places an unreasonable and burdensome obligation upon persons engaged in lawful business and is an unwarranted exercise of the police power.

Workmen's Compensation—Constitutionality of Act. Mackin vs. Detroit-Timkin Axle Co. (Michigan, June 14, 1915. 153 N.W. 49.)

A workmen's compensation law is not unconstitutional as depriving an employee of the common-law remedy for tort, when such act provides that any employee shall be deemed to have accepted the act, if, at the time of the accident, his employer is subject to its provisions, whether the employee has notice thereof or not, provided such employee at the time of hiring does not give the employer notice in writing that he elects not to be subject to the act. There is no vested right in any common-law remedy for a tort yet to happen, and there is no coercion upon the employee, because he has free choice by giving notice to elect not to go under the act. Nor is such an act unconstitutional in so far as it exempts household servants, farm laborers, and casual employees from its provisions. The classification made is within the legislative power. Nor is the act unconstitutional in so far as it provides that payments thereunder shall not be assignable or subject to attachment or garnishment, as limiting the right of contract.